UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/758,648	01/10/2001	Larry Lunetta	004565.P001	9518

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SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. BOX 2938
MINNEAPOLIS, MN 55402

EXAMINER
PATEL, KANJIBHAI B

ART UNIT	PAPER NUMBER
2624	

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Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	09/758,648	LUNETTA ET AL.
	Examiner	Art Unit	
	Kanji Patel	2624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on _09 March 2006_.

2a) ☒ This action is **FINAL.**   2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) _1-5,16-25,32-38,42-46,50-52,55-59,62,63 and 70-79_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) _1-5,16-25,32-38,42-46,50-52,55-59,62,63 and 77_ is/are rejected.

7) ☒ Claim(s) _70-76 and 78-79_ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All b) ☐ Some * c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _3/10/06_.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

Response to Amendment

1.   Applicant's amendment filed on 3/9/06 has been entered and made of record.

By this amendment, claims 1, 21, 34, 42, 50 and 57 are amended.

Claims 6-15, 26-31, 39-41, 47-49, 53-54, 60-61 and 64-69 are cancelled.

Claims 70-79 are added new.

Claims 1-5, 16-25, 32-38, 42-46, 50-52, 55-59, 62-63 and 70-79 are pending in

the application.

Correction of Inventorship

2.   Correction of Inventorship Under 37 CFR 1.48(a) is Sufficient.

In view of the papers filed on August 09, 2005, it has been found that this

nonprovisional application, as filed, through error and without deceptive intent,

improperly set forth the inventorship, and accordingly, this application has been

corrected in compliance with 37 CFR 1.48(a). The inventorship of this application has

been changed by adding the following persons also as joint inventors.

(1) Criss Harms, a citizen of the United States of America and having a

residence address of 23450 Old Santa Cruz Hwy, Los Gatos, CA 95033;

(2) Gerald McLaughlin, a citizen of the United States of America and having a

residence address of 530 29th Avenue, San Mateo, Ca 94403; and

 (3) David Sipes, a citizen of the United States of America and having a

residence address of 2640 Hacienda Street, San Mateo, CA 94404.

The application will be forwarded to the Office of Initial Patent Examination

(OIPE) for issuance of a corrected filing receipt, and correction of Office records to

reflect the inventorship as corrected.

Response to Arguments

3.   Applicant's arguments with respect to claims 1-5, 16-25, 32-38, 42-46, 50-52, 55-

59 and 62-63 have been considered but are moot in view of the new ground(s) of

rejection.

Bornstein provides applicant's main argument regarding the missing limitation of

warping information in Berger et al. as explained in the following rejection.

Information Disclosure Statement

4.   Information Disclosure Statement submitted on 3/10/06 has been considered by

the examiner.

Claim Rejections - 35 USC § 103

5.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

> This application currently names joint inventors. In considering patentability of the claims under
> 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly
> owned at the time any inventions covered therein were made absent any evidence to the contrary.
> Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of
> each claim that was not commonly owned at the time a later invention was made in order for the
> examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior
> art under 35 U.S.C. 103(a).

Claims 1-5, 16-25, 32-38, 42-46, 50-52, 55-59 and 62-63 are rejected under 35

U.S.C. 103(a) as being unpatentable over Berger et al. (hereinafter referred to as

Berger) (US 6,414,693 B1) in view of Bornstein (US 6,144,388-IDS).

For claim 1, Berger discloses a method for generating a composite image

including (at least figure 1):

presenting a first image (at least 702 in figures 7-8 represents a first image;

column 2, lines 26-27; bags, luggage, totes, portfolios can provide a first image) via a

web interface (104, 106, 108 provide a router providing a web interface) presented on a

browser (clients 110, 112 in figure 1 provide web browsers);

presenting a second image (at least 704 in figures 7-8 corresponds to a second

image; column 2, line 28; graphics images like logos, trade names, photographs can

provide a second image) via a web interface presented on the browser;

communicating (column 2 line 66 to column 3 line 8; cloud 102 in figure 1 is used

for communication between server and clients) a selection (column 6, lines 48-55;

column 5, lines 50-59) of the first image (602, 702) and the second image (608, 704) to

a server (116) via a network (100);

automatically generating a composite image (Figure 4; using Drag and Drop

function of the mouse will generate a composite image; for example 702 in figure 9 is a

composite image) of the first image and the second image at the server (116); and

communicating (102, 104, 106, 108) the composite image (702 in figure 9) from

the server (116) to the browser (110, 112) via the network (100).

Berger does not clearly disclose the automatic generation of the composite image using the **warp information** included in the product image file. However in the same field of endeavor (image composition over a network), Bornstein discloses a computer-implemented process of generating a two dimensional image of a selected article of clothing superimposed at a location on a two-dimensional image of a person using a computer network having at least a server and a client computer, comprising the automatic generation of the composite image using the **warp information** included in the product image file (column 4, lines 15-33; column 14, lines 31-52; column 16, lines 22-67). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Berger by the teaching of Bornstein. Because such a modification will provide a system and method for quickly and precisely generating a two-dimensional image of a article of clothing superimposed on an image of a person that depicts the person normally and naturally wearing the article of clothing i.e. a photo realistic result, when in fact that person is not actually wearing that article of clothing as shown by Bornstein at column 2, lines 39-45.

For claims 2, 22, 35, 43, 51, 58, Berger discloses the method wherein the first image is a product image (at least bag in figures 7-8 is a product image).

For claims 3, 23, 36, 44, 52 and 59, Berger discloses the method wherein the second image is a decorative image including any one of a group of images including a logo image and a text image (704 in figures 7-8, corresponds to a decorative image).

For claims 4, 24, 37 and 45, Berger discloses the method wherein the composite image includes the second image placed in a default position on the first image (802, 902 in figure 9).

For claims 5 and 25, Berger discloses the method further including:

positioning the second image (column 4, lines 43-62; see also figures 6-7; column 7, lines 44-57; double arrow 902 is used to position horizontally and arrow 904 is used to position vertically) relative to the first image (702 in Figures 7-8) presented on the browser to generate relative positioning information;

communicating (102, 104, 106, 108) the relative positioning (column 7, lines 44-57) information to the server (116) via the network (100);

automatically generating the composite image (702 in figure 9 is a composite image) of the first image (702 in figures 7-8) and the second image (704) at the server (116) according to the relative positioning information (figure 9).

For claim 16 and 32, Berger discloses the method wherein the composite image (702 in figure 9) is associated with information in a database (122 in figure 1 is a database), the associated information in the database being communicated together with the composite image from the server (116) to the browser (110, 112) via the network (102, 104, 106,108) as a photo sample (figure 9).

For claims 17 and 33, Berger discloses the method wherein the photo sample is sent via network to a specified e-mail address (column 8, lines 13-20).

For claim 18, Berger discloses the method wherein a URL containing the photo sample is sent via network to a specified e-mail address (column 8, lines 13-20; column 4, lines 30-42).

For claim 19, Berger discloses the method wherein a user zooms (column 7, lines 13-15) in to the photo sample.

For claim 20, Berger discloses the method wherein a user zooms out of the photo sample (column 7, lines 13-15).

For claim 21, see the rejection of claim 1 above.

For claim 34, Berger discloses a network-based method for generating a composite image, the method including:

presenting a first image (at least 702 in figures 7-8 represents a first image; column 2, lines 26-27; bags, luggage, totes, portfolios can provide a first image; 602) for user selection (column 6, lines 48-55; column 5, lines 50-59) via a first Web interface presented on a browser 110);

uploading a second image (at least in Figure 6, by clicking button 608 a second image of logo image uploaded to composite with the first image of bag);

communicating (102, 104, 106, 108 are used for communication) a selection (column 6, lines 48-55; column 5, lines 50-59) of the first image and the second image to a server (116) via a network (100);

displaying the composite image via a second web interface presented on the browser (at least Figure 9).

Berger does not clearly disclose the automatic generation of the composite image using the warp information included in the product image file. However in the same field of endeavor (image composition over a network), Bornstein discloses a computer-implemented process of generating a two dimensional image of a selected article of clothing superimposed at a location on a two-dimensional image of a person using a computer network having at least a server and a client computer, comprising the automatic generation of the composite image using the warp information included in the product image file (column 4, lines 15-33; column 14, lines 31-52; column 16, lines 22-67). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Berger by the teaching of Bornstein. Because such a modification will provide a system and method for quickly and precisely generating a two-dimensional image of a article of clothing superimposed on an image of a person that depicts the person normally and naturally wearing the article of clothing i.e. a photo realistic result, when in fact that person is not actually wearing that article of clothing as shown by Bornstein at column 2, lines 39-45.

For claims 38 and 46, see at least the rejection of claim 5 above.

For claim 42, see the rejection of at least claims 1 and 34 above.

For claim 50, Berger discloses an apparatus for generating a composite image (Figures 1, 9) including:

a first image database (122; column 3, lines 37-43), the first image database to store at least one first image file (column 2 line 59 to column 4 line 29);

a second image database (122; column 3, lines 37-43), said second image

database to store at least one second image file (Figure 2);

a server (116) to receive a user selection (column 6, lines 48-55; column 5, lines

50-59) of the first image file and the second image file and to generate a composite

image (Figure 9) of a first image and a second image wherein the second image is

positioned relative to the first image.

Berger does not clearly disclose the automatic generation of the

composite image using the warp information included in the product image file. However

in the same field of endeavor (image composition over a network), Bornstein discloses a

computer-implemented process of generating a two dimensional image of a selected

article of clothing superimposed at a location on a two-dimensional image of a person

using a computer network having at least a server and a client computer, comprising the

automatic generation of the composite image using the warp information included in the

product image file (column 4, lines 15-33; column 14, lines 31-52; column 16, lines 22-

67). Therefore, it would have been obvious to one of ordinary skill in the art at the time

of the invention to modify Berger by the teaching of Bornstein. Because such a

modification will provide a system and method for quickly and precisely generating a

two-dimensional image of a article of clothing superimposed on an image of a person

that depicts the person normally and naturally wearing the article of clothing i.e. a photo

realistic result, when in fact that person is not actually wearing that article of clothing as

shown by Bornstein at column 2, lines 39-45.

For claims 55 and 62, Berger discloses the apparatus wherein the server (116)

is further configured to generate a photo sample (figure 9).

For claims 56 and 63, Berger discloses the apparatus wherein the server (116)

is further configured to transmit the photo sample via the network (102) to a specified e-

mail address (column 8, lines 13-20).

For claim 57, see the rejection of claim 42 above.

For claim 77, Bornstein discloses the network-based method, wherein receiving

a composite image includes the composite image having the second image appear on

the first image according to the warping information (column 4, lines 15-33).

Allowable Subject Matters

6.   **Claims 70-76 and 78-79** are objected to as being dependent upon a rejected

base claim, but would be allowable if rewritten in independent form including all of the

limitations of the base claim and any intervening claims.

Conclusion

7.   Applicant's amendment necessitated the new ground(s) of rejection presented in

this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37

CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the date of this final action.

Contact Information

8.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Kanji Patel whose telephone number is (571) 272-7454.

The examiner can normally be reached on Monday to Friday from 8:00 a.m. to 5:00

p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Bella, Matthew can be reached on (571) 272-7478. The fax phone number

for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

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Should you have questions on access to the Private PAIR system, contact the

Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kanji Patel
Art Unit 2624
4/17/06

KANJIBHAI PATEL
PRIMARY EXAMINER